

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

DARNELL L. RUSSELL,

Petitioner,

vs.

SCOTT FRAKES, Director of Nebraska  
Department of Correctional Services; and  
MICHELLE CAPPS, Warden of  
Nebraska State Penitentiary, Lincoln,  
Nebraska;

Respondents.

**8:19CV213**

**ORDER**

This matter is before the court on the Notice of Appeal (filing 35) filed by Petitioner on September 30, 2020. Petitioner appeals from the court's Memorandum and Order dated September 17, 2020 (filing 34), in which the court denied what it construed as a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b). Also before the court is a memorandum from the Clerk of the Court requesting a ruling as to a certificate of appealability and as to Petitioner's authorization to proceed in forma pauperis on appeal and. (Filing 36.)

The court finds that because Petitioner has previously been granted leave to proceed IFP on appeal (*see* filing 26), he may now proceed on appeal in forma pauperis without further authorization. *See* Fed. R. App. P. 24(a)(3).

The court will also not issue a certificate of appealability for the reasons previously stated in the Memorandum and Order dismissing the habeas petition with prejudice. (Filing 16.)

IT IS THEREFORE ORDERED that Petitioner may proceed on appeal in forma pauperis. No certificate of appealability has been or will be issued.

Dated this 2nd day of October, 2020.

BY THE COURT:



Richard G. Kopf  
Senior United States District Judge